

1 MICHAEL A. JACOBS (CA SBN 111664)
MJacobs@mofo.com
2 ARTURO J. GONZÁLEZ (CA SBN 121490)
AGonzalez@mofo.com
3 ERIC A. TATE (CA SBN 178719)
ETate@mofo.com
4 MORRISON & FOERSTER LLP
425 Market Street
5 San Francisco, California 94105-2482
Telephone: 415.268.7000
6 Facsimile: 415.268.7522
7 Attorneys for Defendants
UBER TECHNOLOGIES, INC.,
8 OTTOMOTTO LLC, and OTTO TRUCKING LLC
9 KAREN L. DUNN (*Pro Hac Vice*)
kdunn@bsfllp.com
10 HAMISH P.M. HUME (*Pro Hac Vice*)
hhume@bsfllp.com
11 BOIES SCHILLER FLEXNER LLP
1401 New York Avenue, N.W.
12 Washington DC 20005
Telephone: 202.237.2727
13 Facsimile: 202.237.6131
14 Attorneys for Defendants
UBER TECHNOLOGIES, INC.
15 and OTTOMOTTO LLC

16 UNITED STATES DISTRICT COURT
17 NORTHERN DISTRICT OF CALIFORNIA
18 SAN FRANCISCO DIVISION

19 WAYMO LLC,
20 Plaintiff,
21 v.
22 UBER TECHNOLOGIES, INC.,
23 OTTOMOTTO LLC; OTTO TRUCKING LLC,
24 Defendants.

Case No. 3:17-cv-00939-WHA

**DECLARATION OF KEVIN
FAULKNER IN SUPPORT OF
DEFENDANTS' LETTER BRIEF
REGARDING APRIL 6, 2017 ORDER**

Date: May 3, 2017
Time: 7:30 a.m.
Ctmm: 8, 19th Floor
Judge: The Honorable William Alsup

Trial Date: October 2, 2017

1 **The number of in-scope custodians in this investigation presents a challenge.**

2 5. To identify the Waymo Materials, Stroz, Uber, and outside counsel identified
3 servers and data repositories that potentially maintain information related to LiDAR. Uber also
4 identified 87 Uber employees who had previously worked at Google. Stroz worked with Uber to
5 preserve information for these employees, collect G Suite Gmail and Drive data for these users,
6 and to forensically image computers. The collection is ongoing but, to date, we have collected
7 over 180 computers, devices and accounts, which total over 106.5 terabytes of information. This
8 is the equivalent of over 10.9 billion pages of email data. (See [https://www.lexisnexis.com/
9 applieddiscovery/lawlibrary/whitePapers/ADI_FS_PagesInAGigabyte.pdf](https://www.lexisnexis.com/applieddiscovery/lawlibrary/whitePapers/ADI_FS_PagesInAGigabyte.pdf), downloaded April 10, 2017.)

10 6. The Court's April 6 Discovery Order requires the searching of servers and any
11 officers, directors, or employees that have anything to do with defendants' LiDAR technology. I
12 understand that this adds 45 additional custodians. Based on the work we have performed to date,
13 a reasonable estimate is that we will need to collect at least an additional 100 devices and/or
14 accounts. The forensic collection of this many devices and accounts for these additional
15 custodians could take at least two or three weeks.

16 **The complexity of Uber's IT environment presents unique challenges.**

17 7. Another complicating factor is the complexity of Uber's IT environment. Many of
18 the in-scope custodians are engineers who have multiple computers with varied operating systems
19 and large amounts of disk storage. Uber also relies heavily on cloud storage and remote hosted
20 computing environments, including the Google G Suite, for much of its server infrastructure.
21 This complexity and G Suite present unique challenges for forensic collection and searching.

22 8. By way of example, the volume of Google Drive data for the first 10 custodians
23 was over 600 gigabytes. To date, neither Google Drive's front-end search capability, nor the
24 programmatic interfaces (APIs) have been able to handle the complicated searches required to
25 identify the Waymo Materials. Uber has sought technical support from Google and has been
26 working on a programmatic method to search in the application, but to meet pending deadlines,
27 we elected to download data from Google Drive to perform the searches in our forensic lab.
28 Downloading information from Google Drive for the first 10 custodians took approximately a

1 week due to many problems. We are continuing to download data, but I understand that Waymo
2 has not identified its 10 priority custodians, so we have not been able to prioritize that data. We
3 are hopeful that we can arrive at a more efficient in-app search solution, but even so, I estimate
4 that it could take at least two weeks to search and collect data from Drive for the remaining
5 custodians. If the in-application searching methods fail and we need to download and search data
6 for all in-scope custodians, this could take as long as a month.

7 **The volume of collected materials presents challenges.**

8 9. Forensic analysis and searching of over 106.5 terabytes is a massive undertaking,
9 and this volume will only increase as our collections continue. For the 10 initial custodians, Stroz
10 developed a comprehensive search methodology that parses forensic artifacts related to computer
11 use and searches active and deleted content for filenames and hashes related to the Waymo
12 Materials. Though the time needed for this process varies by device, on average it can take as
13 many as 6-10 hours per computer. Much of this is simply the time required for our computers to
14 parse the data on the images, but forensic examiners also need time to review the results. I
15 estimate that even with a large team of examiners and scores of computers processing data around
16 the clock it will take several weeks to complete these searches for the remaining custodians.

17 **The ordered searches present additional burden.**

18 10. Finally, the search required by the April 6 Order, adds significant burden to the
19 process. As noted in my prior declaration, Stroz Friedberg's findings to date have demonstrated
20 that the Waymo SVN files contain numerous commonly used filenames and other non-unique
21 content that could appear on any computer with Altium or other electrical engineering
22 applications. For this reason, our results for the first ten custodians contain thousands of "false
23 positive" files that take time for Stroz and counsel to sort through and review.

24 11. For this process to be workable, the list of Waymo Materials needs to be refined to
25 a set of truly unique confidential material. Unfortunately, instead of making the search criteria
26 more precise, the Court's Order expands the scope of the searches. The Order requires Uber to
27 search for all of the 14,000-plus allegedly downloaded files, including the common design files
28 that are neither confidential nor originate from Waymo. Further, the Order introduced a set of 15

1 additional search terms provided by Waymo, which are incredibly broad and appear designed not
2 to identify the Waymo Materials. These terms were so broad that Stroz needed to augment its
3 search methodology to incorporate the use of an additional search application called Relativity.
4 Relativity is designed for wide-sweeping eDiscovery searches and large-scale document review,
5 not forensic searches. Our processing of data into and searching on Relativity is ongoing. As of
6 Sunday evening, we have processed over 2.7 million documents, and have promoted over
7 130,000 documents for attorney review. While metrics like these are not uncommon during
8 normal, long-term electronic document discovery, this is not an approach that will work to
9 identify Waymo's allegedly stolen material in a short timeframe.

10 **A proposed solution.**

11 12. In my experience in alleged intellectual property theft matters, I have found that
12 the best solutions are developed when the parties' forensic consultants and subject matter experts
13 work together. Stroz would be happy to participate in a meet and confer with Waymo's forensic
14 consultant to develop a method that achieves Waymo's objective of finding its confidential
15 information, to the extent it exists at Uber. Over the weekend Stroz examined the content of the
16 approximate 14,000 Waymo SVN files to develop additional indicators that could be used to
17 perform more precise searches, including fuzzy and/or block hash values. Together the parties'
18 experts could review these indicators and devise an approach designed to find the alleged stolen
19 Waymo Materials in a manner that is thorough enough to identify the information wherever it
20 might reside, but that does so without returning tens of thousands of irrelevant documents.

21 13. The parties' forensic consultants could make a joint recommendation to the court
22 along with an appropriate timeline given the technical parameters of the search process and the
23 volume and scope of the data to be searched.

24 I declare under the penalty of perjury under the laws of the United States of America that
25 the foregoing is true and correct. Executed this 10th day of April, 2017, in Paris, France.

26
27 

28 Kevin Faulkner